

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN SEARLE, #645865,

Petitioner,

v.

CASE NO. 2:09-CV-13369
HONORABLE LAWRENCE P. ZATKOFF

LLOYD RAPELJE,

Respondent.

**ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION BUT
GRANTING HIS APPLICATION TO PROCEED IN FORMA PAUPERIS ON APPEAL**

Michigan prisoner John Searle ("Petitioner") filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging the validity of his state court sentence. This Court denied relief on his claims and denied a certificate of appealability. This matter is before the Court on Petitioner's motion for reconsideration of the certificate of appealability denial, as well as his application to proceed *in forma pauperis* on appeal.

The Court finds no reason to reconsider its decision denying a certificate of appealability. A motion for reconsideration which presents issues already ruled upon by the court, either expressly or by reasonable implication, will not be granted. *See Hence v. Smith*, 49 F. Supp. 2d 547, 550 (E.D. Mich. 1999); *Czajkowski v. Tindall & Assoc., P.C.*, 967 F. Supp. 951, 952 (E.D. Mich. 1997). Petitioner has not met his burden of showing a palpable defect by which the Court has been misled or his burden of showing that a different disposition must result from a correction thereof, as required by Local Rule 7.1(h)(3). Accordingly, the Court **DENIES** Petitioner's motion for

reconsideration.

A party to a district court action who seeks to proceed *in forma pauperis* on appeal must file a motion in the district court. *See* Fed. R. App. P. 24(a)(1). An appeal may not be taken *in forma pauperis* if the court determines that it cannot be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); *see also Foster v. Ludwick*, 208 F. Supp. 2d 750, 764-65 (E.D. Mich. 2002) (recognizing that the standard for granting leave to proceed *in forma pauperis* on appeal is lower than that for granting a certificate of appealability). Although the Court has declined to issue a certificate of appealability in this case, it nonetheless finds that an appeal can be taken in good faith. Accordingly, the Court **GRANTS** Petitioner's application to proceed *in forma pauperis* on appeal.

IT IS SO ORDERED.

s/Lawrence P. Zatkoff

LAWRENCE P. ZATKOFF

UNITED STATES DISTRICT JUDGE

Dated: October 26, 2011

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on October 26, 2011.

s/Marie E. Verlinde

Case Manager

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